

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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OMAR QAZI,

Case No. 2:18-cv-00291-APG-NJK

v

Petitioner.

ORDER

STATE OF NEVADA, et al.,

Respondents.

15 On February 20, 2018, the Court dismissed the petition in this case on the grounds
16 that petitioner had not properly commenced the action by paying the filing fee or filing the
17 appropriate, complete pauper application. (ECF No. 4). Judgment was entered that same
18 date. (ECF No. 5).

19 On February 28, 2018, petitioner dispatched an amended petition for filing and on
20 March 6, 2018, he paid the filing fee. (See ECF Nos. 6 & 7). The Court construes
21 petitioner's amended petition and payment of the filing fee in this closed case as a motion
22 to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). So
23 construed, the motion is granted, and the judgment in this case entered on February 20,
24 2018, is hereby VACATED.

25 The Court therefore proceeds to initial review of the petition pursuant to Rule 4 of
26 the Rules Governing Section 2254 Cases in the United States District Courts. Upon
27 review, it is clear the petition must be dismissed for lack of jurisdiction.

1 First, petitioner explicitly frames his petition as a challenge to a July 11, 2017,
2 decision of the Nevada Supreme Court. (ECF No. 6 at 2). To that extent, petitioner
3 impermissibly seeks to have this Court exercise an appellate jurisdiction over the state
4 supreme court that it does not have. Federal district courts do not have appellate
5 jurisdiction over a state supreme court or other state court, whether by direct appeal,
6 mandamus, or otherwise. See, e.g., *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923);
7 *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). While the jurisdictional
8 limitation recognized in *Rooker* does not function as a rule of claim or issue preclusion, it
9 does preclude a party from seeking the relief sought here: an order from a lower federal
10 court directing a state supreme court how to proceed in its cases.

11 Second, petitioner has filed this action as a petition for writ of habeas corpus
12 pursuant to 28 U.S.C. § 2254. To be entitled to relief under § 2254, petitioner must be “in
13 custody pursuant to the judgment of a State court.” *Id.* A federal district court may only
14 consider a habeas petition if the petitioner was in custody at the time of filing of the federal
15 petition. *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (per curiam); *Bailey v. Hill*, 599
16 F.3d 976, 978-79 (9th Cir. 2010). Petitioner admits, however, that he was not in custody
17 at the time he filed his federal petition. (See ECF No. 6 at 2). This fact is verified by an
18 examination of the records of the relevant state courts in this case.

19 In this action, petitioner challenges a decision of the Nevada Supreme Court in
20 Case No. 69085. (See ECF No. 6 at 6 (Ex.1)). That court’s docket reflects that the
21 judgment of conviction challenged in Case No. 69085 arose out of Case No. C273567 in
22 the Eighth Judicial District Court.¹ The Eighth Judicial District Court’s docket reflects that
23 the judgment of conviction in Case No. C273567, which sentenced petitioner to a term of
24 12 to 60 months, was entered on March 8, 2012.² Thus, by the time petitioner dispatched

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27 ¹ See <http://caseinfo.nvsupremecourt.us/public/caseView.do?csID=37295> (last visited Mar. 8, 2018).

28 ² See <https://www.clarkcountycourts.us/Portal> (last visited Mar. 8, 2018).

1 his federal petition on or after February 13, 2018, his sentence in Case No. 273567 had
2 fully expired.³ (See ECF No. 1-1 at 3).

3 Petitioner's argument that he nonetheless satisfies the "in custody" requirement
4 because he was in custody when he filed his *state* postconviction petition is without merit.
5 *Carafas v. LaVallee*, 391 U.S. 234 (1968), on which petitioner relies, does not stand for
6 that proposition. Rather, it holds only that a federal court continues to have jurisdiction
7 over a federal habeas petition even after a petitioner has been released from custody so
8 long as the petitioner was in custody at the time he filed his *federal* petition. *Id.* at 238.

9 Furthermore, a petitioner does not remain "in custody" under a conviction after the
10 sentence imposed for it has fully expired, merely because of the possibility that the prior
11 conviction will be used to enhance the sentences imposed for any subsequent crimes of
12 which he is convicted. *Maleng*, 490 U.S. at 492. Even though there may be some limited
13 circumstances under which a petitioner could attack a fully expired conviction if that
14 conviction was used to enhance a new sentence, such attack would not properly be raised
15 in a habeas petition challenging solely the expired conviction, which is what petitioner
16 attempts to do here. See *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394, 401
17 (2001); *Dubrin v. People of California*, 720 F.3d 1095, 1099 (9th Cir. 2013).

18 As petitioner was not in custody when he filed his federal petition, the Court lacks
19 jurisdiction over his petition. This action must therefore be dismissed.

20 IT IS THEREFORE ORDERED that petitioner's motion to alter or amend the
21 judgment is GRANTED, and the judgment entered on February 20, 2018 is hereby
22 VACATED.

23 IT IS FURTHER ORDERED that the amended petition (ECF No. 6) is DISMISSED
24 WITHOUT PREJUDICE for lack of subject matter jurisdiction.

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³ This conclusion is further supported by an earlier order in Nevada Supreme Court Case No. 69085, attached to the
28 petition, which indicates that petitioner had been released from custody by October 19, 2016, at the latest. (See
ECF No. 6 at 16).

1 IT IS FURTHER ORDERED that a certificate of appealability is DENIED. Jurists of
2 reason would not find debatable whether the Court was correct in its dismissal of the
3 action for lack of jurisdiction, for the reasons discussed herein.

4 The Clerk of Court shall enter final judgment accordingly, dismissing this action
5 without prejudice, and close this case.

6 Dated: March 9, 2018.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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